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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,216	09/30/2003	Lori C. Kroll		2507

7590 02/25/2005  
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EXAMINER

KATCHEVES, BASIL S

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,216

Applicant(s)

KROLL ET AL.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 5 recite the limitation "the banister" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claims 6 and 7 recite the limitation "the cord" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 31 recites the limitations "the hook surfaces" and "the stair edge" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,379,491 to Solo.

Regarding claim 14, Solo discloses a gripper having a hooked bottom surface (fig. 21: see hooks on bottom) and a grommet (fig. 21: 144) which will inherently transfer a force through the body when secured to another item. Regarding the deep machined limitation, even though product-by-process claims are limited by and defined by the

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process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-13, 21-23, and 25-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,852,194 to Langan in view of U.S. Patent No. 5,379,491 to Solo.

Regarding claims 1 and 21, Langan discloses a stair (column 1, line 48) safety system for small children (title) comprising a mesh net (1), having a long first edge (3 at top) and a second long edge (3 at bottom). Langan also discloses temporary connectors (7) to secure the net to the stair railing (fig. 4) and to the top surface of the stairs below (fig. 3: 7 & 19). However, Langan does not disclose a stair edge gripper having a hook surface for securing the second set of connectors. Solo discloses a gripper (figs. 18 & 21) having a hooked bottom surface (fig. 12: 42) suitable for mounting on stair edges (fig. 51) for securing items. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Langan by

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using the gripper disclosed by Solo in order to avoid drilling holes in lower stair surfaces or floor surfaces in general.

Regarding claims 2, 6, 7, 22, 26 and 27, Langan discloses the basic claim structure of the instant application but does not disclose specific dimensions of the cord. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Regarding claims 3, 8-10, 23 and 28-30, Langan discloses the basic claim structure of the instant application but does not disclose specific dimensions of the mesh. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Regarding claims 5 and 25, Langan discloses cable ties to secure the netting to the banister (column 2, line 59).

Regarding claims 11 and 31, Solo discloses hooks (30). Applicant should note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

Regarding claims 12, 13, 32 and 33, Solo discloses the basic claim structure of the instant application but does not disclose specific dimensions of the hook depth.

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Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Claims 4 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,852,194 to Langan in view of U.S. Patent No. 5,379,491 to Solo further in view of Conner.

Regarding claims 4 and 24, Langan in view of Solo do not disclose the use of securing the net with a hook and loop fastener to the banister. Conner discloses a safety net (22) secured to a surrounding frame (12a) by use of hook and loop fasteners (36 & 38). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Langan in view of Solo by using a hook and loop fastener to secure the safety net to the banister in place of the ties (7) in order to ease installation and removal of the netting.

Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,379,491 to Solo.

Regarding claims 15, 16, 17, 19 and 20, Solo discloses the basic claim structure of the instant application but does not disclose specific dimensions of the hooks. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

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Regarding claim 18, Solo does not specifically disclose a method of attaching an object to a carpeted stair edge. However, Solo discloses attaching an object to a stair edge (fig. 51) and also discloses attaching a hooked surface to a looped surface (figs. 15 & 21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Solo by directly putting the device (fig. 21) onto carpeting, as carpeting is known for being made of loops, connectable to the underside hooks, and carpeting is also well known in the art for being applied to stairways (fig. 51).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to safety nets in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (703) 306-0232. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (703) 308-0832.

BK

  
Basil Katcheves

2/17/05

Examiner AU 3635